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LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

February 19, 1985

Honorable Sam A. McConnell, Jr.  
State Representative  
District 2  
Arizona House of Representatives  
Phoenix, Arizona 85007

Re: 185-025 (R85-013)

Dear Representative McConnell:

You have asked whether customers leaving self-serve gasoline stations without paying for gasoline or other products can be prosecuted under A.R.S. § 13-1805, the shoplifting law, rather than A.R.S. § 13-1802, the theft statute. We conclude that, while the traditional charge for this offense is theft, A.R.S. § 13-1805 also applies.

A.R.S. § 13-1805 provides:

A. A person commits shoplifting if, while in an establishment in which merchandise is displayed for sale, such person knowingly obtains such goods of another with the intent to deprive him of such goods by:

1. Removing any of the goods from the immediate display or from any other place within the

establishment without paying the purchase price; or

2. Charging the purchase price of the goods to a fictitious person or any person without his authority; or

3. Paying less than the purchase price of the goods by some trick or artifice such as altering, removing, substituting or otherwise disfiguring any label, price tag or marking; or

4. Transferring the goods from one container to another; or

5. Concealment.

\* \* \*

G. Shoplifting property with a value of more than one thousand dollars is a class 5 felony. Shoplifting property with a value of more than one hundred dollars but not more than one thousand dollars is a class 6 felony. Shoplifting property valued at one hundred dollars or less is a class 1 misdemeanor, unless such property is a firearm in which case the shoplifting is a class 6 felony.

The Arizona Court of Appeals has distinguished shoplifting from theft by noting that shoplifting can only be committed within a mercantile establishment. State v. Robertson, 128 Ariz. 145, 624 P.2d 342 (App. 1980). In our opinion, a person who is on the premises of a gasoline station where gasoline is displayed for sale would be deemed to be "in an establishment in which merchandise is displayed for sale." See, e.g., Fox v. Standard Oil Company, 294 U.S. 37 (1984) (gasoline filling and service stations maintained for the sale of gasoline and other petroleum products held "mercantile establishments" within state store license tax act). We think

Honorable Sam A. McConnell, Jr.  
February 19, 1985  
Page 3

that the transfer of the gasoline to a person's gas tank from the pump where the gasoline is "displayed" with the intent to deprive the owner of the merchandise without payment falls within the language of A.R.S. § 13-1805, the pertinent shoplifting law.

Sincerely,



BOB CORBIN  
Attorney General

BC:DH